

REMARKS/ARGUMENTS

Solely in an effort to advance prosecution, claim 1 has been amended. Claims 1-30 are pending, although claims 7-30 are pending and withdrawn.

Applicant's representative thanks Examiners Singh and Weber for the interview conducted on July 21, 2010. Applicant disagrees that the evidence of record enables anything other than synthesized phospholipids, and Applicant notes that the Patent Office has made no attempt to prove the *Wands* factors would establish enablement of the reference. *See* MPEP 2121.01 ("mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation"). Indeed, during the interview it was emphasized that the Examiners were both skilled in the art. But if the Examiners are relying upon their personal knowledge to fill in the undisclosed details of the cited reference (as appears to be the case here), a sworn affidavit is required to maintain the rejection: "When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons." 37 C.F.R. § 1.104(d)(2) (emphasis added). No affidavit has been provided.

Furthermore, it appears based on the electronic record that further searching was performed shortly after the interview. Based on the search queries, it appears that the promised follow-up article was sought. Because the only identified article was not cited

in the Advisory Action dated August 2, 2010, Applicant reasonably assumes that it has no relevance to this application. *See* 37 C.F.R. 1.104(b) (stating that “the examiner’s action will be complete as to all matters”).

Solely in an attempt to advance prosecution, Applicant has amended the claims in accordance with the interview, such that they conform to the Examples. In particular, the nanopatch sensors are prepared prior to fusion into the membranes of living cells. Accordingly, Applicant requests withdrawal of the sole rejection over Johnston.

Furthermore, Applicant requests that the provisional double-patenting be withdrawn for reasons previously stated.

If any small matters remain outstanding (e.g., matters that can be resolved via an Examiner’s Amendment), the Examiner is encouraged to telephone Applicant’s representative. Prompt reconsideration and allowance of this application is requested.

JELINEK
Appl. No. 10/573,814
August 4, 2010

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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